

1 **FEDERAL ELECTION COMMISSION**

2 **FIRST GENERAL COUNSEL'S REPORT**

3 **MUR: 7135**

4 **DATE COMPLAINT FILED:** September 14, 2016

5 **DATE OF NOTIFICATION:** September 21, 2016

6 **SUPPLEMENTAL COMPLAINTS FILED:** None

7 **LAST RESPONSE RECEIVED:** December 19,
8 2016

9 **DATE ACTIVATED:** January 19, 2017

10
11 **EXPIRATION OF SOL:** July 15, 2021

12 **ELECTION CYCLE:** 2016

13
14 **COMPLAINANT:**

Brad Woodhouse

American Democracy Legal Fund

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16
17 **RESPONDENTS:**

Paul Manafort

Donald J. Trump for President, Inc. and Timothy

Jost in his official capacity as treasurer

Donald J. Trump

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20
21
22 **RELEVANT STATUTES
23 AND REGULATIONS:**

52 U.S.C. § 30125(e)(1)(A)

11 C.F.R. § 300.2(m)

11 C.F.R. § 300.60

11 C.F.R. § 300.61

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28 **INTERNAL REPORTS CHECKED:**

Disclosure Reports

29
30 **FEDERAL AGENCIES CHECKED:**

None

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32 **I. INTRODUCTION**

33 The Complaint alleges that Paul Manafort, as an agent of both Donald J. Trump and
34 Donald J. Trump for President, Inc. and Timothy Jost in his official capacity as treasurer (the
35 "Committee"), violated 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 300.61 by soliciting
36 contributions to the independent-expenditure-only political committee ("IEOPC") Rebuilding
37 America Now, which supported Trump in the 2016 Presidential election. Although the facts
38 indicate Manafort's comment during a television interview—an alleged request for a \$6 million
39 contribution to the Trump campaign itself—was not made in earnest, the facts also indicate that

1 five days later, Manafort, in his capacity as Chairman of the Trump presidential campaign,
2 solicited contributions to the IEOPC during a telephone call with the IEOPC's contributors.
3 Accordingly, we recommend that the Commission find reason to believe that Manafort and the
4 Committee violated 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 300.61 and authorize an
5 investigation in connection with the Rebuilding America Now call.

6 II. FACTUAL BACKGROUND

7 On July 15, 2016, Paul Manafort appeared on the "Fox and Friends" television show in
8 his capacity as Chairman of the Trump presidential campaign.¹ The interviewer asked Manafort
9 "[i]s it true that Sheldon Adelson has been asked to shell out a six million dollar check for all the
10 corporate sponsors [that] bailed out of the RNC?"² Manafort replied, "I have no idea. I'm not
11 the RNC. I'd like to have him bail out — write a check for the Trump campaign for that amount
12 of money, if he could."³ On July 20, 2016, Rebuilding America Now hosted a meeting attended
13 by approximately 30 contributors.⁴ Also in attendance were Alex Castellanos, the National
14 Media, Creative & Production Leader for Rebuilding America Now, and Marty Obst, Vice
15 President Pence's Director of Operations during the campaign.⁵ At the meeting, the contributors

¹ See Resp. at 1-2 (Dec. 19, 2016); Compl. at 1-2. The respondents filed a joint response.

² Compl. at 2 (Sept. 14, 2016)(video available at *Is Trump Rethinking his VP Pick after Attack in Nice?*, Fox and Friends (July 15, 2016)(available at <http://video.foxnews.com/v/5036949908001/?#sp=show-clips>)). The relevant exchange begins at 6:45 of the video clip.

³ *Id.*

⁴ Alex Isenstadt and Kenneth P. Vogel, *Trump Blesses Major Super PAC Effort*, POLITICO (July 20, 2016), available at <http://www.politico.com/story/2016/07/trump-super-pac-donors-225892>. ("A number of major donors attended, including chain restaurant mogul Andy Puzder and construction billionaire John Rakolta, while representatives for other mega-donors, including Jets owner Woody Johnson, Texas oil billionaire Harold Hamm and [Home Depot co-founder Bernie] Marcus....")

⁵ *Id.*, see also Zachary Mider, *Top Trump Aides Signal Support for a Super-PAC*, BLOOMBERG (July 20, 2016), available at <https://www.bloomberg.com/politics/articles/2016-07-20/top-trump-aide-said-to-plan-super-pac-fundraiser-appearance>.

1 were shown a slide displaying then-Governor Pence's picture alongside a quote attributed to
2 Pence saying "Supporting Rebuilding America Now is one of the best ways to stop Hillary
3 Clinton and help elect Donald Trump our next President!"⁶ Paul Manafort also called into the
4 meeting and, according to Castellanos, "gave [Rebuilding America Now] contributors a briefing
5 on the state of the campaign and let folks know that there's no better way to help elect Donald
6 Trump than to support our PAC, Rebuilding America Now."⁷ Manafort also indicated that he
7 would not be calling any other PACs.⁸ During a press interview the day after the meeting,
8 Castellanos told the interviewers that "campaigns are not allowed to coordinate with their
9 PACs," but also referred to Manafort's and Obst's participation in the meeting and stated, "I
10 don't think any other PAC is getting that kind of encouragement."⁹ According to a news report,
11 an attendee at this meeting pledged \$2 million to Rebuilding America Now "on the way out the
12 door."¹⁰

13 The Complaint alleges that—taking the statements on "Fox and Friends" and during the
14 Rebuilding American Now meeting together—Manafort, as an agent of Trump and the
15 Committee, solicited a \$6 million contribution in support of the Trump campaign to be given to

⁶ *Id.* (A photograph of the slide was given to Politico reporters and is available at <http://static.politico.com/82/37/a220e5774f6e893fadcc4d48abfe/rebuilding-america-now-pac-slide.jpg>)

⁷ Betsy Fisher Martin and Tammy Haddad, *Alex Castellanos Revs Up Super-PAC for Trump*, BLOOMBERG POLITICS (July 22, 2016) (Audio of the interview was included on the July 22 episode of the "Masters in Politics Podcast." The podcast and corresponding article were posted on July 22, 2016, but the interview was recorded the previous day.); *See also* Rebuilding America Now informational brochure, available at <http://www.politico.com/f/?id=00000156-2eff-db8a-a57f-6efff89c0001>

⁸ *Trump Blesses Major Super PAC Effort*, POLITICO (July 20, 2016)

⁹ Betsy Fisher Martin and Tammy Haddad, *MASTERS IN POLITICS PODCAST* (July 22, 2016), <https://soundcloud.com/bloomberg-business/episode-14-alex-castellanos>, at 0:01:45 (last visited Apr 12, 2017).

¹⁰ *Trump Blesses Major Super PAC Effort*, POLITICO (July 20, 2016).

the PAC, in violation of the Act and Commission regulations.¹¹ Respondents, citing MUR 6939 (Huckabee), argue that Manafort's remarks were made in jest and were not a solicitation; there was nothing improper about Manafort's remarks at the Rebuilding America Now event; and the Complaint's assertion that the events were linked is speculative.¹²

III. LEGAL ANALYSIS

The Act prohibits federal candidates, federal officeholders, their agents, and entities established, financed, maintained, or controlled by federal candidates or officeholders from soliciting funds that fall outside "the limitations, prohibitions, and reporting requirements" of the Act in connection with a federal election.¹³ Given this prohibition on soliciting nonfederal funds, federal candidates or officeholders, and their agents, may only solicit contributions for an IEOPC up to \$5,000 from federal political committees and individuals who are not prohibited sources.¹⁴ Commission regulations define "agent" of a federal candidate or federal officeholder as "any person who has actual authority, either express or implied . . . to solicit, receive, direct, transfer, or spend funds in connection with any election."¹⁵

Respondents do not deny that Manafort, the Committee's Chairman, was acting as an agent of the campaign during both the "Fox and Friends" interview and the Rebuilding America

¹¹ Compl. at 5.

¹² Resp. at 3-8. Respondents also argue that the Complaint does not allege a violation for which President Trump would be personally liable, and the Commission should dismiss the Complaint as to him. *Id.* at 1, n. 1. Given our recommendation to investigate Manafort's July 20, 2016, comments to IEOPC donors, we recommend that the Commission take no action as to Trump personally at this time.

¹³ See 52 U.S.C. § 30125(e)(1)(A); 11 C.F.R. § 300.61; Advisory Op. 2015-09 (Senate Majority PAC *et al.*).

¹⁴ See Advisory Op. 2011-12 (Majority PAC *et al.*) at 3; 52 U.S.C. § 30116(a)(1)(C) (imposing a \$5,000 limit on contributions to non-authorized, non-party committees).

¹⁵ 11 C.F.R. § 300.2(b)(ii).

1 Now call.¹⁶ Thus, we consider whether Manafort's statement on Fox and Friends and his
2 purported statement to Rebuilding America Now's contributors constitute solicitations under the
3 Act and Commission regulations.

4 Commission regulations define "solicit" broadly as "to ask, request, or recommend,
5 explicitly or implicitly, that another person make a contribution, donation, transfer of funds, or
6 otherwise provide anything of value."¹⁷ The regulation states that the communication should be
7 "construed as reasonably understood in the context in which it is made"¹⁸ This test is
8 objective and does not turn on the subjective interpretations of the speaker or the recipients.¹⁹
9 The Commission explained that its objective standard "hinges on whether the recipient should
10 have reasonably understood that a solicitation was made."²⁰ The Commission further explained
11 that "words that would by their plain meaning normally be understood as a solicitation, may not
12 be a solicitation when considered in context, such as when the words are used as part of a joke or
13 parody."²¹

14 The literal language of Manafort's statement on "Fox and Friends" could be interpreted
15 as a request or recommendation that Adelson make a \$6 million contribution to support Trump's
16 candidacy. Viewed in context, however, a reasonable person would not believe that Manafort
17 asked, requested, or recommended that Adelson make an excessive contribution to the Trump

¹⁶ See Resp. at 1-2.

¹⁷ 11 C.F.R. § 300.2(m).

¹⁸ *Id.*

¹⁹ *Id.*; see also Definitions of "Solicit" and "Direct"; Final Rule; 71 Fed. Reg. 13926-02, 13928 (March 20, 2006) ("2006 Solicitation E & J").

²⁰ 71 Fed. Reg. 13929.

²¹ *Id.* (citing *Phantom Touring, Inc. v. Affiliated Publications*, 953 F.2d 724, 727 (1st Cir. 1992) (concluding that no reasonable listener would understand that a theater critic who wrote "[t]he producer who decided to charge admission for that show is committing highway robbery" was accusing the producer of the actual crime of robbery).

1 campaign. First, the phrase “if he could” at the end of Manafort’s statement suggests that
2 Manafort understood that no individual (other than Trump himself) could legally contribute \$6
3 million to the Trump campaign, which supports the conclusion that Manafort made the statement
4 as a humorous aside. A reasonable person could also have understood that Manafort was joking
5 since he smiled and chuckled while making the statement, and one or more of the hosts laughed
6 in response.

7 The Commission recently dismissed a similar allegation on these grounds in MUR 6939.
8 The complaint in that matter alleged that Presidential candidate Mike Huckabee impermissibly
9 solicited a million dollar contribution to Pursuing America’s Greatness (“PAG”), an IEOPC.²²
10 While speaking to the crowd at the announcement of his Presidential campaign, Huckabee
11 encouraged listeners to donate small amounts to his campaign each month, and then said “if you
12 want to give a million dollars, please do it. But I know most of you can’t.”²³ In determining that
13 a reasonable person would believe Huckabee was merely making “a humorous aside,” the
14 Commission noted that in delivering this statement:

15 “Huckabee then visibly altered his facial expression . . . while making the aside
16 [and] his demeanor changed in a way that further would have reasonably
17 evidenced to his audience that his remarks were not serious or intended to be
18 taken literally — he closes his eyes, pauses, shrugs, and smiles — and many in
19 the audience laughed.”²⁴

20 The Commission determined that, in light of the context and manner in which Huckabee made
21 his statement, a reasonable person would not have believed he was being earnest.²⁵

²² Factual & Legal Analysis, MUR 6939 (Mike Huckabee, *et al.*).

²³ *Id.* at 6-7.

²⁴ *Id.* at 6.

²⁵ *Id.* at 7.

1 Manafort's delivery of the statement and the reactions of the hosts on "Fox and Friends"
2 were similar to those in MUR 6939. Furthermore, as in MUR 6939, Manafort made this
3 statement in reference to the campaign committee, which could not accept a \$6 million
4 contribution from Adelson, and he did not mention or refer to the IEOPC. These facts support
5 the conclusion that Manafort made this statement in jest.²⁶ Since Manafort's statement on "Fox
6 and Friends" does not appear to have been in earnest, we conclude that Manafort's statement was
7 not a solicitation of Adelson.²⁷ Because we conclude that Manafort did not solicit Adelson, his
8 subsequent statements on the July 20 call did not direct Adelson to contribute to Rebuilding
9 America Now, as alleged in the Complaint.

10 However, Manafort's reported statements on the July 20 call, standing alone, constituted
11 a solicitation generally. According to Castellanos, who was present at the meeting during which
12 Manafort made the statements, in addition to updating Rebuilding America Now's contributors
13 on the status of the campaign, Manafort also allegedly said that "there is no better way to help
14 elect Donald Trump than to support [the] PAC, Rebuilding America Now."²⁸

15 Respondents argue that the allegation that Manafort made a solicitation is based on
16 hearsay from an interview with Castellanos, not on a direct quotation from Manafort.²⁹

²⁶ For the 2016 election cycle, a person could contribute a total of \$2,700 per election to a candidate's authorized committee. 52 U.S.C. § 30116(a)(1)(A). A multi-candidate political action committee could contribute a total of \$5,000 to a candidate's authorized committee. 52 U.S.C. § 30116(a)(2)(C).

²⁷ See 2006 Solicitation E&J at 13929 (explaining that "under the revised [regulation], the Commission's objective standard hinges on whether the recipient should have reasonably understood that a solicitation was made"). See also 2016 Post-General Report, Rebuilding America Now (Dec. 8, 2016); 2016 Pre-General Report, Rebuilding America Now (Oct. 27, 2016); Amended 2016 July Quarterly Report, Rebuilding America Now (Oct. 21, 2017); 2016 October Quarterly Report, Rebuilding America Now (Oct. 15, 2016) (While liability under section 30125's prohibition applies to solicitations—fulfilled or not—Rebuilding America Now's reports do not indicate that Adelson or his Las Vegas Sands Corporation ever contributed to the IEOPC.)

²⁸ See Betsy Fisher Martin and Tammy Haddad, *Alex Castellanos Revs Up Super-PAC for Trump*, BLOOMBERG POLITICS (July 22, 2016).

²⁹ Resp. at 5.

1 Respondents also generally question the accuracy of Castellanos's summary and — although
2 they do not proffer any alternate quote or summary of Manafort's remarks on July 20 —
3 characterize Manafort's comments as merely a briefing about the campaign "as Commission
4 guidance permits."³⁰ However, all of the available information suggests that Castellanos — who
5 heard Manafort's statement approximately 24 hours before he recorded the July 21 interview —
6 correctly recounted Manafort's comments.³¹ Respondents argue in the alternative that even if
7 Castellanos's summary was accurate, Manafort's comments do not fit within the definition of
8 "solicitation," but rather are "akin to those examples which the regulations expressly state are *not*
9 solicitations."³²

10 To the contrary, the available information and the regulations indicate that Manafort's
11 July 20 comments were a solicitation. If Manafort's actual comments on the July 20 call were
12 substantially similar to Castellanos's summary, it would be reasonable for those on the
13 conference call — who Castellanos characterized as "our contributors" — to believe that
14 Manafort was recommending they contribute to Rebuilding America Now.³³ To illustrate, the
15 relevant regulations provide that the following statements are solicitations: "Group X has always
16 helped me financially in my elections [; p]lease keep them in mind this fall" and "[g]iving
17 \$100,000 to Group X would be a very smart idea."³⁴ These examples are similar in meaning to
18 Manafort's statement to the Rebuilding America Now contributors "...and let folks know that

³⁰ Resp. at 2, 5.

³¹ See pages 2-3, above.

³² Resp. at 5 (citing 11 C.F.R. §300.2(m)(1), (2) and arguing that Manafort's comments are similar to statements the Commission does not consider to be solicitations).

³³ 11 C.F.R. § 300.2(m).

³⁴ See 11 C.F.R § 300.2(m)(2) (providing examples of statements that constitute solicitations)

1 there's no better way to help elect Donald Trump than to support our PAC, Rebuilding America
2 Now.”

3 Agents of a Federal candidate are subject to the Act's soft money prohibitions and may
4 only solicit contributions of up to \$5,000 for an IEOPC and must also comply with the Act's
5 source limitations when acting in their capacity as an agent for the candidate.³⁵ Although
6 Manafort would be permitted to solicit soft money for certain IEOPCs in his individual capacity
7 — provided he used the proper disclaimers — he was clearly speaking on the July 20 call as an
8 agent of the Committee and would be prohibited from soliciting soft money in that capacity.³⁶
9 There is no information that Manafort took any steps to make sure that he was only soliciting
10 funds that comply with the Act's amount limitations and source prohibitions and a news report
11 indicates that an attendee pledged \$2 million to the IEOPC at the conclusion of the meeting
12 where Manafort made the statement. Thus, there is a sufficient basis to investigate whether
13 Manafort solicited soft money as an agent of the Committee.³⁷

14 Accordingly, we recommend that the Commission find reason to believe that Paul
15 Manafort and Donald J. Trump for President, Inc. and Timothy Jost in his official capacity as

³⁵ 52 U.S.C. § 30125(e)(1)(B); *see also* AO 2011-12 at 4; AO 2015-09 at 7.

³⁶ *See* AO 2015-09 at 7 (“The Commission has concluded that individuals who are agents of federal candidates may solicit funds on behalf of other organizations if the individuals act in their own capacities exclusively on behalf of the other organizations when fundraising for them, not on the authority of the candidates, and raise funds on behalf of the candidates and the other organizations at different times.”)(internal quotation marks omitted). The Commission could not reach an agreement on whether an agent of a candidate, acting in his or her own capacity, could raise soft money for a Single-Candidate Committee. *See* AO 2015-09 at 7.

³⁷ *See* Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12,545, 12,545 (Mar. 16, 2007) (“The Commission will find ‘reason to believe’ in cases where the available evidence in the matter is at least sufficient to warrant conducting an investigation, and where the seriousness of the alleged violation warrants either further investigation or immediate conciliation.”).

1 treasurer violated 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 300.61 by soliciting contributions
2 to Rebuilding America Now.³⁸

3 **IV. PROPOSED INVESTIGATION**

4 We intend to determine conclusively whether Manafort solicited soft money on the July
5 20 call, and if so, the scope of the violation. Specifically, we intend to verify the contents of the
6 statements Manafort made on the call with potential Rebuilding America Now contributors. We
7 also intend to identify the sources and amounts of any contributions resulting from Manafort's
8 statements. Although we plan to use informal investigative methods, we recommend that the
9 Commission authorize the use of compulsory process in case Respondents are not cooperative.

10 **V. RECOMMENDATIONS**


- 11 1. Find reason to believe that Paul Manafort and Donald J. Trump for President, Inc. and
12 Timothy Jost, in his official capacity as treasurer, violated 52 U.S.C. §
13 30125(e)(1)(A) and 11 C.F.R. § 300.61 by soliciting contributions to Rebuilding
14 America Now;
- 15 2. Take no action at this time as to Donald J. Trump;
- 16 3. Authorize the use of compulsory process, as necessary;
- 17 4. Approve the attached Factual and Legal Analysis; and
- 18 5. Approve the appropriate letters.

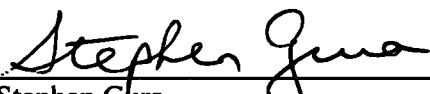
³⁸ As mentioned in n. 12, we recommend that the Commission take no action President Trump personally at this time. We intend to make appropriate recommendations as to all respondents when the proposed investigation concludes.

Lisa J. Stevenson
Acting General Counsel


4.20.17

Date


Kathleen M. Guith
Associate General Counsel
for Enforcement


Stephen Gura
Deputy Associate General Counsel
for Enforcement


Lynn Y. Tran
Assistant General Counsel


Ray L. Wolcott
Attorney

Attachment
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Paul Manafort MUR 7135
Donald J. Trump for President, Inc. and
Timothy Jost in his official capacity as treasurer
Donald J. Trump

I. INTRODUCTION

The Complaint alleges that Paul Manafort, as an agent of both Donald J. Trump and Donald J. Trump for President, Inc. and Timothy Jost in his official capacity as treasurer (the “Committee”), violated 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 300.61 by soliciting contributions to the independent-expenditure-only political committee (“IEOPC”) Rebuilding America Now, which supported Trump in the 2016 Presidential election. The facts indicate that Manafort, in his capacity as Chairman of the Trump presidential campaign, solicited contributions to the IEOPC. Accordingly, the Commission finds reason to believe that Manafort and the Committee violated 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 300.61.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Analysis

On July 15, 2016, Paul Manafort appeared on the “Fox and Friends” television show in his capacity as Chairman of the Trump presidential campaign.¹ The interviewer asked Manafort “[i]s it true that Sheldon Adelson has been asked to shell out a six million dollar check for all the corporate sponsors [that] bailed out of the RNC?”² Manafort replied, “I have no idea. I’m not the RNC. I’d like to have him bail out — write a check for the Trump campaign for that amount

¹ See Resp. at 1-2 (Dec. 19, 2016); Compl. at 1-2 (Sept. 14, 2016). The respondents filed a joint response.

² Compl. at 2(video available at *Is Trump Rethinking his VP Pick after Attack in Nice?*, Fox and Friends (July 15, 2016)(available at <http://video.foxnews.com/v/5036949908001/?#sp=show-clips>)). The relevant exchange begins at 6:45 of the video clip.

1 of money, if he could.”³ On July 20, 2016, Rebuilding America Now hosted a meeting attended
2 by approximately 30 contributors.⁴ Also in attendance were Alex Castellanos, the National
3 Media, Creative & Production Leader for Rebuilding America Now, and Marty Obst, Vice
4 President Pence’s Director of Operations during the campaign.⁵ At the meeting, the contributors
5 were shown a slide displaying then-Governor Pence’s picture alongside a quote attributed to
6 Pence saying “Supporting Rebuilding America Now is one of the best ways to stop Hillary
7 Clinton and help elect Donald Trump our next President!”⁶ Paul Manafort also called into the
8 meeting and, according to Castellanos, “gave [Rebuilding America Now] contributors a briefing
9 on the state of the campaign and let folks know that there’s no better way to help elect Donald
10 Trump than to support our PAC, Rebuilding America Now.”⁷ Manafort also indicated that he
11 would not be calling any other PACs.⁸ During a press interview the day after the meeting,
12 Castellanos told the interviewers that “campaigns are not allowed to coordinate with their
13 PACs,” but also referred to Manafort’s and Obst’s participation in the meeting and stated, “I

³ *Id.*

⁴ Alex Isenstadt and Kenneth P. Vogel, *Trump Blesses Major Super PAC Effort*, POLITICO (July 20, 2016), available at <http://www.politico.com/story/2016/07/trump-super-pac-donors-225892> (“A number of major donors attended, including chain restaurant mogul Andy Puzder and construction billionaire John Rakolta, while representatives for other mega-donors, including Jets owner Woody Johnson, Texas oil billionaire Harold Hamm and [Home Depot co-founder Bernie] Marcus....”).

⁵ *Id.*, see also Zachary Mider, *Top Trump Aides Signal Support for a Super-PAC*, BLOOMBERG (July 20, 2016), available at <https://www.bloomberg.com/politics/articles/2016-07-20/top-trump-aide-said-to-plan-super-pac-fundraiser-appearance>.

⁶ *Id.* (A photograph of the slide was given to Politico reporters and is available at <http://static.politico.com/82/37/a220e5774f6e893fadcc4d48abfe/rebuilding-america-now-pac-slide.jpg>).

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1 don't think any other PAC is getting that kind of encouragement."⁹ According to a news report,
2 an attendee at this meeting pledged \$2 million to Rebuilding America Now "on the way out the
3 door."¹⁰

4 The Complaint alleges that — taking the statements on "Fox and Friends" and during the
5 Rebuilding American Now meeting together — Manafort, as an agent of Trump and the
6 Committee, solicited a \$6 million contribution in support of the Trump campaign to be given to
7 the PAC, in violation of the Act and Commission regulations.¹¹ Respondents, citing MUR 6939
8 (Huckabee), argue that Manafort's remarks were made in jest and were not a solicitation; there
9 was nothing improper about Manafort's remarks at the Rebuilding America Now event; and the
10 Complaint's assertion that the events were linked is speculative.¹²

11 **B. Legal Analysis**

12 The Act prohibits federal candidates, federal officeholders, their agents, and entities
13 established, financed, maintained, or controlled by federal candidates or officeholders from
14 soliciting funds that fall outside "the limitations, prohibitions, and reporting requirements" of the
15 Act in connection with a federal election.¹³ Given this prohibition on soliciting nonfederal
16 funds, federal candidates or officeholders, and their agents, may only solicit contributions for an
17 IEOPC up to \$5,000 from federal political committees and individuals who are not prohibited

⁹ Betsy Fisher Martin and Tammy Haddad, MASTERS IN POLITICS PODCAST (July 22, 2016),
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¹³ See 52 U.S.C. § 30125(e)(1)(A); 11 C.F.R. § 300.61.

1 sources.¹⁴ Commission regulations define “agent” of a federal candidate or federal officeholder
2 as “any person who has actual authority, either express or implied . . . to solicit, receive, direct,
3 transfer; or spend funds in connection with any election.”¹⁵

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5 agent of the campaign during both the “Fox and Friends” interview and the Rebuilding America
6 Now call.¹⁶ Thus, we consider whether Manafort’s statement on Fox and Friends and his
7 purported statement to Rebuilding America Now’s contributors constitute solicitations under the
8 Act and Commission regulations.

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10 explicitly or implicitly, that another person make a contribution, donation, transfer of funds, or
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12 “construed as reasonably understood in the context in which it is made”¹⁸ This test is
13 objective and does not turn on the subjective interpretations of the speaker or the recipients.¹⁹
14 The Commission explained that its objective standard “hinges on whether the recipient should
15 have reasonably understood that a solicitation was made.”²⁰

¹⁴ See Advisory Op. 2011-12 (Majority PAC *et al.*) at 3; 52 U.S.C. §30116(a)(1)(C)(imposing a \$5,000 limit on contributions to non-authorized, non-party committees).

¹⁵ 11 C.F.R. § 300.2(b)(ii).

¹⁶ See Resp. at 1-2.

¹⁷ 11 C.F.R. § 300.2(m).

¹⁸ *Id.*

¹⁹ *Id.*; see also Definitions of “Solicit” and “Direct”; Final Rule; 71 Fed. Reg. 13926-02, 13928 (March 20, 2006)(“2006 Solicitation E & J”).

²⁰ 71 Fed. Reg. 13929.

1 The literal language of Manafort's statement on "Fox and Friends" could be interpreted
2 as a request or recommendation that Adelson make a \$6 million contribution to support Trump's
3 candidacy. Regardless of whether a reasonable person would have believed that Manafort asked,
4 requested, or recommended that Adelson make an excessive contribution to the Trump campaign
5 during that appearance, Manafort's reported statements on the July 20 call, standing alone,
6 constituted a solicitation generally. According to Castellanos, who was present at the meeting
7 during which Manafort made the statements, in addition to updating Rebuilding America Now's
8 contributors on the status of the campaign, Manafort also allegedly said that "there is no better
9 way to help elect Donald Trump than to support [the] PAC, Rebuilding America Now."²¹

10 Respondents argue that the allegation that Manafort made a solicitation is based on
11 hearsay from an interview with Castellanos, not on a direct quotation from Manafort.²²
12 Respondents also generally question the accuracy of Castellanos's summary and — although
13 they do not proffer any alternate quote or summary of Manafort's remarks on July 20 —
14 characterize Manafort's comments as merely a briefing about the campaign "as Commission
15 guidance permits."²³ However, all of the available information suggests that Castellanos — who
16 heard Manafort's statement approximately 24 hours before he recorded the July 21 interview —
17 correctly recounted Manafort's comments.²⁴ Respondents argue in the alternative that even if
18 Castellanos's summary was accurate, Manafort's comments do not fit within the definition of

²¹ See Betsy Fisher Martin and Tammy Haddad, *Alex Castellanos Revs Up Super-PAC for Trump*, BLOOMBERG POLITICS (July 22, 2016).

²² Resp. at 5.

²³ *Id.* at 2, 5.

²⁴ See pages 2-3, above.

1 “solicitation,” but rather are “akin to those examples which the regulations expressly state are *not*
2 solicitations.”²⁵

3 To the contrary, the available information and the regulations indicate that Manafort’s
4 July 20 comments were a solicitation. If Manafort’s actual comments on the July 20 call were
5 substantially similar to Castellanos’s summary, it would be reasonable for those on the
6 conference call — who Castellanos characterized as “our contributors” — to believe that
7 Manafort was recommending they contribute to Rebuilding America Now.²⁶ To illustrate, the
8 relevant regulations provide that the following statements are solicitations: “Group X has always
9 helped me financially in my elections. Keep them in mind this fall” and “Giving \$100,000 to
10 Group X would be a very smart idea.”²⁷ These examples are similar in meaning to Manafort’s
11 statement to the Rebuilding America Now contributors “...and let folks know that there’s no
12 better way to help elect Donald Trump than to support our PAC, Rebuilding America Now.”

13 Agents of a Federal candidate are subject to the Act’s soft money prohibitions and may
14 only solicit contributions of up to \$5,000 for an IEOPC and must also comply with the Act’s
15 source limitations when acting in their capacity as an agent for the candidate.²⁸ Manafort was
16 clearly speaking on the July 20 call as an agent of the Committee and would be prohibited from
17 soliciting soft money in that capacity. There is no information that Manafort took any steps to
18 make sure that he was only soliciting funds that comply with the Act’s amount limitations and
19 source prohibitions and a news report indicates that an attendee pledged \$2 million to the IEOPC

²⁵ Resp. at 5 (citing 11 C.F.R. §300.2(m)(1), (2) and arguing that Manafort’s comments are similar to statements the Commission does not consider to be solicitations).

²⁶ 11 C.F.R. § 300.2(m).

²⁷ See 11 C.F.R. § 300.2(m)(2) (providing examples of statements that constitute solicitations).

²⁸ 52 U.S.C. § 30125(e)(1)(B); see also AO 2011-12 at 4.

1 at the conclusion of the meeting where Manafort made the statement. Thus, there is a sufficient
2 basis to investigate whether Manafort solicited soft money as an agent of the Committee.²⁹

3 Accordingly, the Commission finds reason to believe that Paul Manafort and Donald J.
4 Trump for President, Inc. and Timothy Jost in his official capacity as treasurer violated 52 U.S.C.
5 § 30125(e)(1)(A) and 11 C.F.R. § 300.61 by soliciting contributions to Rebuilding America
6 Now.³⁰

²⁹ See Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12,545, 12,545 (Mar. 16, 2007) (“The Commission will find ‘reason to believe’ in cases where the available evidence in the matter is at least sufficient to warrant conducting an investigation, and where the seriousness of the alleged violation warrants either further investigation or immediate conciliation.”).

³⁰ The Commission takes no action as to Trump personally at this time.